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Paper No. 16

BRUCE MIHURA
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NOV 6 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
BRUCE MIHURA
Application No. 09/134,799
Filed: August 14, 1998
For: **MUSIC SYSTEM**

DECISION
ON PETITION

This is a decision on the communication received September 23, 2003 which is being treated as a Renewed Petition to Withdraw the Holding of Abandonment, under MPEP 711.03(c)(II) and pursuant to 37 CFR § 1.181(a). No fee is required.

The application is abandoned for failure to timely file a proper reply to the non-final Office action mailed May 7, 2001. A Notice of Abandonment was mailed September 19, 2002.

Petitioner alleges that the non-final Office action was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action on the part of the Patent and Trademark Office.

As indicated in the first decision denying Petitioner's request (paper No.14 mailed September 10, 2003), the address of the petitioner is not the address of record and no change of address can be found in the file. Furthermore, Jeffery C. Hood (Reg. No. 35,198) is not a practitioner of record in this application and hence cannot effect an address change. It appears he was never appointed power of attorney by applicant. Applicant may wish to consider filing a proper Power of Attorney, or provide evidence of a proper previous submission.

Given petitioner is not recognized as practitioner in the application, the renewed petition to withdraw holding of abandonment fails to meet requirements (a) through (c) above.

Accordingly, the petition is **DENIED**.

Applicant may want to consider filing a petition under 37 CFR §1.137(b) (Revival of an unintentionally abandoned application), along with the appropriate petition fee. A courtesy copy of this decision will be sent to the address below. However, without proper establishment of power of attorney, no further communications will be sent to the address below.



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